113-104

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 117.

PHILADELPHIA BAR ASSOCIATION

JOHN K. FINDLAY, PLAINTIFF IN ERROR,

vs.

THOMAS McALLISTER, JOHN Q. ADAMS, FRANCIS M. COWELL, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 15, 1881.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the March term, 1881, thereof, between John K. Findley, plaintiff, and Thos. McAllister, John Q. Adams, Francis M. Cowell, James Donnelly, J. G. McClintock, Josiah Smoot, Wm. P. Browning, J. D. Skidmore, Jos. E. Billups, C. W. Jamison, Albert H. Pitkin, Benj. T. Shacklett, James S. Bussy, D. H. Kendall, and Levi J. Wagner, defendants, a manifest error hath happened, to the great damage of the said John K. Findley, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Issued at office, in the city of St. Louis, with seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.]

M. M. PRICE,
Clerk Circuit Court United States,
Eastern District of Missouri.
By A. P. SELBY, *Deputy.*

Allowed by—
SAMUEL TREAT, *Judge.*

2 *Return to Writ.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix

the seal of said circuit court at office, in the city of St. Louis, this 27th day of June, A. D. 1881.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy Clerk.

[Endorsed:] No. —. United States circuit court, eastern district of Missouri. John K. Findley *vs.* Thos. McAllister *et al.* Writ of error to the circuit court of the U. S. east'r- dist. of Missouri, Returned and filed — day of ——, 187– ——, clerk. Fil'd May 21, 1881. M. M. Price, cl'k.

3 The United States of America to Thomas McAllister, John Q. Adams, Francis M. Cowell, James Donnelly, J. G. McClintock, Josiah Smoot, W. P. Brow-ing, Js. D. Skidmore, Joseph E. Billups, Cy. W. Jamison, Albert H. Pitkin, Benj. T. Shacklett, Jas. S. Bussey, D. H. Kendall, and Levi J. Wagner, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein John R. Findlay is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 20th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

SAMUEL TREAT,
Judge United States District Court,
Eastern District of Missouri.

Service of citation acknowledged.

JAS. V. BROADHEAD,
Att'y for Def'ts.

May 21st, 1881.

4 [Endorsed:] United States circuit court, east'n district of Missouri. John Findlay *vs.* Thos. McAllister *et al.* Citation. Filed May 21, 1881. M. M. Price, clerk.

5 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern District of Missouri.

Be it remembered that on the fourteenth day of October, A. D. 1880, at a regular stated term of the circuit court of the United States

in and for the eastern district of Missouri, begun and held at the city of St. Louis, in said district, on Monday, the 20th day of September, in the year last aforesaid, the following, among other proceedings, were had and appear of record in said court, to wit:

6 JOHN K. FINDLAY, Plaintiff,

vs.

THOMAS MCALLISTER *et al.*, Defendants.

Now comes plaintiff, by attorney, and files amended petition herein.

Said amended petition is in words and figures following, to wit:

7 *Amended Petition.*

In the Circuit Court of the United States for the Eastern District of Missouri. September Term, 1880.

JOHN K. FINDLAY, Plaintiff,

v.

THOMAS MCALLISTER, JOHN Q. ADAMS, FRANCIS M. COWELL, JAMES Donnelly, J. G. McClintock, Josiah Smoot, Wm. P. Browning, J. D. Skidmore, Joseph E. Bellups, C. W. Jamison, Albert H. Pitkin, Benjamin T. Shacklett, James S. Bussey, D. H. Kendall, and Levi J. Wagner, Defendants.

The plaintiff, having obtained leave of court, therefore, for his amended petition, says:

That he is a resident of the city of Philadelphia and a citizen of the State of Pennsylvania, and the defendants are residents of Scotland county and citizens of the State of Missouri.

Plaintiff avers that he is the owner and holder of nine bonds of one thousand dollars each, running twenty-five years from the 1st day of December, 1870, and bearing 8 per cent. interest per annum, with interest coupons attached, for the yearly interest thereon. That said bonds were issued by the county of Scotland, in the State of Missouri, in payment of subscription made under authority of law to the capital stock of the Missouri, Iowa & Nebraska Railway Company, formed by consolidation of the Alexandria & Nebraska City railroad (formerly the Alexandria & Bloomfield Railroad Company of Missouri) with the Iowa Southern Railway Company, of Iowa. That plaintiff was the owner and holder of certain others of the coupons detached from other of the said series bonds, and

8 that on the 25th day of September, A. D. 1877, he recovered a judgment in this court against said county of Scotland, founded upon said coupons, in the sum of four thousand and eight and eighty-six one-hundredths dollars.

That said county failing to pay said judgment, or to make any provisions for the payment thereof, there was issued by this court a peremptory writ of mandamus, commanding the county court of said Scotland county to levy and cause to be collected a special tax upon all property within said county made taxable by law sufficient to pay said judgment, interest, and costs. That at the same time

similar writs of mandamus were issued by this court, directing the said county court of Scotland county to levy similar special taxes to pay various other judgments rendered in this court against said county, upon like demands and in favor of divers other plaintiffs.

Plaintiff states that, in obedience to said several writs, the said county court of the said Scotland county did levy a special tax sufficient to pay off all of said judgments denominated judgment tax, and caused the same to be placed upon the tax-books of said county, and to be placed in the hands of the collector of said county for collection; and that a part of said tax so levied was so levied in obedience to the writ of mandamus in the case of this defendant against said county, and for the purpose of raising money to pay the same. Wherefore plaintiff avers that he had and has a vested right and interest in the said special tax to the amount of his said judgment, interest, and costs.

Plaintiff further avers that after said special tax had been levied and said tax bond placed in the hands of the collector of said county for collection, the defendants, at the county of Scotland aforesaid, in connection with divers other evil-disposed persons, residents of said county, to the number of about two thousand, did un-
9 lawfully, maliciously, corruptly, and in contempt of the orders, judgments, and mandates of this court, combine, confederate, and conspire together for the purpose of hindering, delaying, and preventing the said county court and the collector of said Scotland county from doing and performing the things required of them by the mandates of this court, to wit, the collection and payment of said special tax, so, as aforesaid, levied for the purpose of paying the aforesaid judgment of the plaintiff, and for the purpose of depreciating the value of the plaintiff's bonds, and thereby inducing and compelling him to compromise his said judgment and bonds at much less than their value. That for the purpose of more effectually resisting and preventing the collection of said tax, and of depreciating the value of said bonds and inducing said plaintiff to compromise the said judgment and his said bonds, thereby injuring him in his property, said defendants and their confederates and co-conspirators organized themselves into a society or association denominated "The Tax-Payers' Association of Scotland County," or "The Scotland County Tax-Payers' Association," having a county organization and branch organizations thereof in the various school districts of said county, and for the purpose of resisting the collection of said special tax and of all similar taxes, levied or to be levied for the payment of said judgment or any interest on said bonds; the said defendants and their said confederates and co-conspirators did pledge themselves to contribute of their means and their influence, and to stand by and protect each other in all efforts made to resist the payment of said tax.

That in furtherance of their said designs, the said defendants and their said confederates and co-conspirators, members of said association, made and published threats of violence against the attorneys of this plaintiff employed to represent him in the enforce-
10 ment of the collection of his said judgment, and did by these

resolutions warn and forewarn said attorneys that they would not tolerate any interference upon their (the said attorneys') part in endeavoring to enforce said collection.

That as a further means of preventing the collection and payment of plaintiff's judgment, the defendants and their confederates and co-conspirators gave out and caused it to be given out, circulated, and promulgated that no person would be allowed to to bid upon or purchase any property that might be offered for sale by the collector, under the duties of his office, for the payment of said special tax, thereby designing and intending to overawe and intimidate any persons from bidding upon or purchasing any property that might be offered for sale for the payment of said special taxes.

And the plaintiff avers that for the purpose of inducing the taxpayers of said county to join said association and to aid in said unlawful combination and conspiracy, the defendants willfully, maliciously, fraudulently, falsely, and corruptly gave out and published that the said tax, so, as aforesaid, levied by order of the mandates of this court, was illegal, null and void; that the bonds of said county held by the plaintiff were illegal, null and void, and that they were under no legal or moral obligation to pay the same. The said defendants, well knowing at said time that the said declarations were false and untrue—well knowing that this court and the Supreme Court of the United States had, in the suit of Thomas *v.* Scotland County, declared and held said bonds to be binding and valid obligations of said county, and well knowing that the said United States circuit court had, in the suit of the plaintiff against said county, reaffirmed the decision of this court and the Supreme Court of the United States, by affirming the validity of said bonds, and by rendering plaintiff's judgment, founded upon the
11 coupons detached from said bonds, and by its mandates directing and ordering the county court of said county to levy and cause to be collected the aforesaid special tax for the payment of said judgments.

Plaintiff further states that during the month of February, 1878, the collector of said Scotland county, for the purpose of endeavoring to enforce the collection of said special tax as required by the mandates of this court, levied upon a large number of horses and mules, and caused the same to be advertised to be sold on the 28th day of February, 1878, at Memphis, in said Scotland county. That the defendants and their confederates and co-conspirators, for the purpose and with the intent to prevent the sale of said property, and thereby to prevent the payment of the plaintiff's judgment, and to so harass, wrong, and annoy him as to induce him to compromise and settle his said judgment and bonds at much less than the value due, in contempt of the mandates of this court, assembled in vast numbers at the time and place of sale as so advertised by said collector, and by reason of their combined influence, threats, and hostile demonstrations, did so influence, overawe, and intimidate the persons who had gone there for the purpose and with the intent to bid upon said property, as to prevent them from so bidding on said property when the same was offered for sale, and that by reason of

the said threats, menaces, and combined influence of the said defendants and their confederates and co-conspirators, members of said association, and acting in concert under the orders and resolutions of said association, did prevent any person from bidding on said property when so offered for sale, and did prevent the same from being sold.

Plaintiff avers that said unlawful combination and conspiracy to cheat, injure, and defraud the plaintiff out of the collection of
12 his said judgment still exists on the part of the defendants and their confederates and co-conspirators, and that by reason of their said combined influence, threats, menaces, and demonstrations, the taxpayers of said county are overawed, intimidated, and so influenced as that they do not pay said special tax, nor has the collector been able by reason of said combination and association to collect the same. Wherefore the plaintiff says that he has been greatly damaged to the amount of his said judgment, interest, and costs, to wit, in the sum of four thousandand eight and eighty-six one-hundredths dollars, with interest since September 25, 1877. Plaintiff further claims exemplary damages against said defendants for their wrongful acts in the sum of three thousand dollars.

Wherefore plaintiff demands judgment in the sum of six thousand and eight and eighty-six one-hundredths dollars and costs.

A. J. BAKER & F. T. HUGHES,
Attorneys for Plaintiffs.

And afterwards, on the 18th day of February, 1881, the following demurrer was filed in said case, to wit:

Demurrer.

In the Circuit Court of the United States for the Eastern District of Missouri.

JOHN K. FINDLEY, Plaintiff,
vs.
THOMAS MCALLISTER *et al.*, Defendants. } No. 1464.

The defendants demur to the amended petiition:

1. Because the facts stated in the petition, if true, are not sufficient to constitute a cause of action.

2. Because it does not appear that the plaintiff had any
13 property interest in or lien on the taxes in question, which has been injured by the defendants.

3. Because it does not appear that the collector was prevented from collecting the tax in question, or that he made any effert to collect same.

4. Because the plaintiff has suffered no legal damage by reason of the acts of the defendant.

H. A. CUNNINGHAM,
JAS. O. BROADHEAD,
HAGERMAM, MCCRARY & HAGERMAN,
Attorneys for Defendants.

Laws of Missouri.

The State of Missouri has a general revenue law, which in scope and in detail defines and regulates the objects and modes of taxation and the collection and disbursement of revenues for all purposes.

This law is to be found in sections 6658 to 6911 inclusive (in articles 1 to 11 inclusive), being chapter 145 of the Revised Statutes of Missouri, 1879.

We set out below such portions of the law as relate to county taxes, county officials, and taxpayers and their property, so far as deemed by us to be material to the determination of the questions now before the court.

An assessment is made first by the assessor, then the county court levies the tax, and the tax-book is placed in the hands of the collector.

SEC. 6733. Collector's bond.—Every collector of the revenue in the various counties in this State, and the collector of the revenue in the city of Saint Louis, before entering upon the duties of his office,
14 shall give bond and security to the State, to the satisfaction of the county courts, and in the city of St. Louis to the satisfaction of the mayor of said city, in a sum at least double the amount of all the revenue to be collected by him for any one year, conditioned that he will faithfully and punctually collect and pay over all State, county, and other revenue for the two years next ensuing the first day of March thereafter, and that he will in all things faithfully perform all the duties of the office of collector according to law. The official bond required by this section shall be signed by at least five solvent securities.

SEC. 6744. Tax-book to be delivered to collector.—As soon as may be after the tax-book of each year has been corrected and adjusted, and the amount of county tax stated therein according to law, the county courts shall cause the same to be delivered to the proper collector, who shall give receipts therefor to the clerks of the county courts respectively; and each collector shall be charged by such clerk with the whole amount of the tax-books so delivered to him.

SEC. 6748. Notice to taxpayers.—It shall be the duty of the collectors of revenue of the several counties of the State, immediately after the receipt of the tax-books of their respective counties, to give not less than twenty days' notice of the time and place at which they will meet the taxpayers of their respective counties, and collect and receive their taxes; said notice shall be given by posting up at least four written or printed hand-bills in different parts of each municipal township in said counties, and by publication for two weeks in a newspaper, if one be published in the county, in which he shall notify said inhabitants to meet the collector at such places in their respective townships as may be named therein, and the number of days (not less than three) that he will remain at each of such
15 places for the purpose aforesaid; and it shall be his duty to attend at the time and place thus appointed, either in person or by deputy, to receive and collect such taxes.

SEC. 6749. They shall meet the collector and pay their taxes.—The taxpayers of each township in said counties shall meet such

collector at the time and place appointed by such notice and pay such taxes as may be due against them.

SEC. 6751. Penalty for failure to pay taxes.—If any taxpayer shall fail or neglect to pay such collector his taxes at the time and place required by such notices, then it shall be the duty of the collector, after the first day of January then next ensuing, to collect and account for, as other taxes, an additional tax as penalty of one per cent. per month upon all taxes collected by him after the first day of January as aforesaid; and in computing said additional tax or penalty a fractional part of a month shall be counted as a whole month. Collectors shall on the day of their annual settlement with the county court file with said court a statement under oath of the amount so received, and from whom received, and settle with the court therefor: Provided, however, That said interest shall not be chargeable against persons who are absent from their homes and engaged in the military service of this State or of the United States, or against any taxpayer who shall pay his taxes to the collector at any time before the first day of January in each year: Provided, That the provisions of this section shall apply to the city of St. Louis, so far as the same relates to addition of said interest, which in said city shall be collected and accounted for by the collector as other taxes, for which he shall receive no compensation.

SEC. 6752. Non-residents to be furnished statement.—It shall be the duty of the collector to furnish to all non-resident taxpayers a statement of the amount of taxes assessed against any tract of land or town lot in his county for any year or years during which he is collector, and send the same by mail to the address of any person applying to him by letter for the same; and if no taxes are due on any such tracts or lots, he shall answer such letters of inquiry, stating the facts; and whenever any funds are remitted by mail or otherwise to any collector for the payment of any taxes appearing to be due on his tax-book, it shall be his duty to receive the same, and send a receipt therefor by mail to the person remitting the same: Provided, That he may charge all the sums which he may have to pay for postage as costs against the person applying or remitting to him, but no other costs.

SEC. 6754. Seizure and sale of property after first of October.—The collector shall diligently endeavor and use all lawful means to collect all taxes which they are required to collect in their respective counties, and to that end they shall have the power to seize and sell the goods and chattels of the person liable for taxes, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property whatever shall be exempt from seizure and sale for taxes due on lands or personal property: Provided, That no such seizure or sale for taxes shall be made until after the first day of October of each year, and the collector shall not receive a credit for delinquent taxes until he shall have made affidavit that he has been unable to find any personal property out of which to make the taxes in each case so returned delinquent; but no such seizure and sale of goods shall be made until the collector has made demand for the payment

of the tax, either in person or by deputy, to the party liable to pay the same, or by leaving a written or printed notice at his
17 place of abode for that purpose, with some members of the family over fifteen years of age. Such seizure may be made at any time after the first day of October, and before said taxes become delinquent, or after they become delinquent.

SEC. 6755. Cost of levy to be taxed—Collector may levy, when—His fees.—Whenever taxes shall be collected by seizure or sale of goods and chattels, in addition to the amount of tax and costs of failure to pay the collector, as provided by this chapter, the collector shall levy the necessary costs of the proceeding and the interest on the amount of the tax and costs of said failure for his trouble. If the collector have reason to believe that any person charged with the taxes is about to remove from the county without paying his taxes, he may at any time levy such taxes, with costs and charges, by distress and sale: Provided, That in levying and selling personal property for taxes the collector shall be governed by the same rules and be entitled to the same fees as sheriffs are, or may be, for like services upon executions.

SEC. 6770. Personal and land delinquent lists.—Whenever any collector shall be unable to collect any taxes specified on the tax-book, having diligently endeavored and used all lawful means to collect the same, he shall make lists thereof, one to be called the "personal delinquent list," in which shall be stated the means of all persons owing taxes on personal property, where taxes cannot be collected, alphabetically arranged, with the amount due from each, and the other to be called the "land delinquent list," in which shall be stated the taxes on lands and town lots where taxes have not been collected, with a full description of said lands and lots, and the amount of taxes due thereon set opposite each tract of land or town lot; and a like list of all delinquent clerks and other officers hereinbefore required to pay to the collectors the amount of reve-
18 nue by them respectively received, to be called the "delinquent list of officers."

SEC. 6771. Collector to post personal delinquent list.—Every collector of the revenue shall, at least ten days before the first Monday in March in each year for which he is collector, put up a copy of the personal delinquent list, together with a copy of the list for any previous year that may be in his hands, and the delinquent list of officers, at the court house of his county, and also at one of the most public places in each municipal township in the county; and on failure to put up such copies, such collector so failing shall be liable for the amount of such delinquent list.

SEC. 6772. Collector to return delinquent lists under oath.—At the term of the county court to be held on the first Monday in March, the collector shall return the delinquent lists, and in the city of St. Louis the uncollected tax bills, under oath or affirmation, to such court, and settle his accounts of all moneys received by him on account of taxes and other sources of revenue; and the amount of such delinquent lists, or so much thereof as the court shall find properly returned delinquent, shall be allowed and credited to him on his

settlement. Before allowing the collector such credit for any delinquent lists, the county court shall make special inquiry, and be fully satisfied that he has used due diligence to collect the same, and that he could not find any personal property of the taxpayer out of which to make the taxes. If the court is satisfied that there are any names on the list of persons who have personal property out of which the tax could have been made, it shall, in passing upon such lists, strike such names therefrom.

SEC. 6778. Personal delinquent lists to be delivered to collector's successors.—The personal delinquent lists allowed to any collector shall be delivered to his successor, who shall collect the same, and account therefor as for other moneys collected by him, and shall return such lists to the clerk of the court, to be delivered to his successor, and so on, until the whole shall be collected; the personal delinquent lists allowed to any collector shall be delivered to the collector, and when his term of office shall have expired, then to his successor, who shall be charged with the full amount thereof, if he shall collect the same and account therefor as for other moneys collected by him, and when he makes his next annual settlement he shall return such lists, and shall be entitled to credit for such as he has been unable to collect, said lists to be delivered to his successor, and so on, until the whole shall be collected.

SEC. 6780. Monthly statements and payments.—Every county collector and *ex officio* county collector, except in the city of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all State, county, school, road, and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same, less his commissions, into the State and county treasuries, respectively. It shall be the duty of the county clerk, and he is hereby required, to forward immediately a certified copy of such detailed statement to the State auditor, who shall keep an account of the State taxes with the collector.

SEC. 6785 provides for collectors' commissions, the percentage of which varies according to the taxes of the county, ranging from ten per cent. on taxes of $5,000 to one-half of one per cent. on taxes of $350,000.

SEC. 6786 provides for compensation to collectors for collecting personal delinquent list.

SEC. 6790. Collector may levy on personal property after his term expires.—The payment of taxes by the collector shall be deemed to be made at the request of the tax debtor, and to recover the same he shall have the right to levy upon and sell personal property for twelve months after the expiration of his term of office, the same as when in office; and after the expiration of twelve months he shall have the right to recover the same, with interest from the date of payment at the rate of six per cent. per annum till paid, before any justice of the peace or court having jurisdiction of such action.

SEC. 6822. Collector to make payment after settlement.—Every

collector of the revenue, having made settlement, according to law, of county revenue by him collected or received, shall pay the amount found due into the county treasury, and the treasurer shall give him duplicate receipts therefor, one of which shall be filed in the office of the clerk of the county count, who shall grant him full *quietus* under the seal of the court.

SEC. 6823. Penalty on collector for failing to make payment.—Every collector who shall fail to make payment of the amount due from him on settlement, or in the time and manner prescribed by law, shall forfeit ten per centum a month on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid until actual payment. This section shall apply to all revenue collections made by him, whether for State, county, city, town, district, or school taxes, general or special.

SEC. 6821. Warrants, how drawn—Demands, how presented.—When a demand against a county is presented to the county court, the usual form of entry may be exemplified thus:

A. B. *v.* —— county. The account of A. B. for the sum of —— dollars being presented and inquired into, it is found by the court that the sum of —— dollars is due him from the county, 21 payable out of (express the particular fund, as the case may require), and for which the clerk is ordered to issue a warrant.

When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor in the following form:

Treasurer of the county of ———, pay to —— —— dollars out of any money in the treasury appropriated for (express the particular fund as the case may require). Given at the court-house, this —— day of ——, 18—. By order of the county court.

A. B., *President.*

Attest: C. D., *Clerk.*

SEC. 5370. Shall keep book for entering warrants.—He* shall procure and keep a well bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which he is the treasurer, stating correctly the date, amount, number, in whose favor drawn, by whom presented, and the date the same was presented; and all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment; provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated.

*The county treasurer.

SEC. 5394. County warrants, form of.—When the county court shall ascertain any sum of money to be due from the county, as aforesaid, such court shall order its clerk to issue therefor a warrant, specifying in the body thereof on what account the debt was
22 incurred for which the same was issued, and, unless otherwise provided by law, in the following form:

Treasurer of the county of ——: Pay to ——, —— dollars, out of money in the treasury appropriated for ordinary county expenditures (or express the particular fund, as the case may require).

Given at the court-house, this —— day of ——, 18—, by order of the county court.

A. B., *President.*

Attest: C. D., *Clerk.*

SEC. 6853. Each tract or lot chargeable with its own taxes. Notice to the owner.—Each tract of land or lot shall be chargeable with its own taxes, no matter who is the owner, nor in whose name it is or was assessed or advertised. * * *

SEC. 6836. Provides for the enforcement by suit of taxes against lands.

Brief for Defendants.

There are two main propositions, either one of which, in our judgment, ought to conclusively determine the demurrers in favor of the defendants.

I. The plaintiffs have no such legal property interest in the taxes in question as to entitle them to maintain actions for conspiracy.

2. The plaintiffs have sustained no legal damages by the alleged acts of the defendants.

These propositions are so closely allied that they can best be presented together. The judgments are against the county of Scotland, a *quasi* municipal corporation, an artificial person, and entirely distinct in law, from the natural persons, the taxpayers of the county. If the county had property, subject to execution, it could be seized and sold to satisfy the judgments, but the property of the taxpayers could not be seized on execution for they are not the judgment debtors, and the plaintiffs do not sustain towards them the
23 relation of creditors. The taxpayers are not individually, jointly, or severally liable to the plaintiffs, nor are the judgments in any sense liens upon the property of the taxpayers.

The county is a *quasi* corporation, for certain clearly defined governmental purposes, and is established by the constitution of the State. As such it has continuity and perpetuity. It is the same to-day and to-morrow. On the other hand, the taxpayers are as changeable as the movements of the populace or the vicissitudes of fortune. Those owning the property in the county when the debts were contracted may be entirely different persons from those owning it when the judgments were rendered, and they in turn a different race or generation from those owning it when the judgments shall be paid. A State may provide, as Missouri has provided, methods of taxation by which the officers designated by law may raise funds

to discharge the debts of counties. This, however, can only be done by the exercise of the sovereign legislative power of taxation. In taxing its people there are only two parties recognized by the law, namely, the State and its chosen officers on the one hand and the taxpayers on the other. The only commands of the State are its laws. These laws regulate the rights and obligations of the tax officers and the taxpayers.

Under the law of Missouri the responsibility of the taxpayers for all acts of commission or omission are to the tax officers and to certain prescribed penalties, and not to outside creditors of any of the various municipal subdivisions of the State. We have set out the sections of the laws of Missouri bearing on the relative rights and obligations of the tax officers and the taxpayers, so fas as deemed by us material to the determination of the questions now at issue.

What power have the courts to levy and collect taxes? None,
24 save when given by the express provisions of the law. True, when the law says that taxes may be levied by certain officers, as county courts, to pay certain debts and collected by certain county collectors, the courts may by mandamus compel those officers to proceed to the performance of their duties, but this in nowise enlarges the scope of their official powers. The courts can only command them to proceed according to the law defining their duties.

See Rees *v.* Watertown, 19 Wallace, 107.
Heine *v.* Levee Commissioners, *Ibid.*, 655.
Barkley *v.* Levee Commissioners, 93 U. S., 258.
The City of Memphis case, recently decided by the Supreme Court of the United States, but not yet reported.

Take the present cases. This court, by mandamus, commanded the county court to levy the taxes, and was obeyed. If the tax collector had refused to receive the warrant for collection, the court, by mandamus, could probably have compelled him to receive it, and proceed with the collection. Why is mandamus the proper remedy to enforce the levy of the tax? Simply for the reason there is no other adequate remedy. This court could not, by any of its officers existing or to be appointed, levy the tax, and the tax could never be collected under the law unless first levied as provided by the law. But will any one be so bold as to claim that this court could by mandamus, directed to the taxpayers, compel them to pay their taxes? Certainly not. For the all-sufficient reason that there are ample remedies provided for the collection of the taxes by the laws of the State, and mandamus is not the legal or appropriate remedy to compel the payment of these taxes. The question whether the taxpayers shall pay these taxes is between them and the collector. And
25 the rights and remedies of the tax collector are not enlarged or diminished by the motives of the taxpayers in refusing to pay. The refusal to pay at the appointed time gives the collectors the same right to seize the property, whether the refusal is in consequence of inability, or neglect, or corrupt purpose on the part of the

taxpayer. The same penalties attach for the failure to pay, whether such failure is honest or dishonest.

The collector, we have said, deals with the taxpayers, but he also deals with the county court. He is charged with all the taxes on the tax-book when he receives it, and can be credited with delinquent taxes only in the manner provided by law. For these taxes he and his sureties on his bond are responsible until absolved from responsibility in the manner pointed out by the law. Any delinquent lists returned by him, and credited to him, are again placed in the hands of the collector and charged to him, and so on until the taxes are paid or collection is hopeless. The law provides fully the way to collect taxes due on lands, and authorizes successive levies on personal property.

The petitions in these cases simply show a failure to realize the taxes to pay the judgments at one advertised tax sale of personal property. Should the collector have collected the taxes he could not have paid to the plaintiffs on their judgments. He would have been required to pay to the county treasurer, who could only pay on warrants drawn by the clerk of the county court on the order of the county court, and in the order of their presentation. Much less can the taxpayers pay to the plaintiffs their taxes, either directly or indirectly, by the damages sued for in these cases.

So we here repeat that there is not any such relation between the taxpayers, or their property, and the plaintiffs as to make these defendants liable to these actions for conspiracy. We aver, after much research, that these suits are without any support from prece-
26 dents in England or America. There are many cases which, as we shall see, sustain the principles for which we contend, and upon which we rely as complete defenses to these unparalled suits.

Let us go to the books, and we will see what mere cobwebs these petitions are:

"No action lies for simple conspiracy to do an unlawful act. The act itself and the resulting actual damage to the plaintiff are the only ground of action. An act which, if done by one alone, constitutes no ground of action on the case cannot be made the ground of such action by alleging it to have been done by a conspiracy of several."

Kimbal *v.* Harmon, 34 Md., 107.

The case of Adler *v.* Fenton, 24 Howard, p. 408, is an instructive and illustrative authority, and much in point. It was an action by creditors at large of Adler & Scheff upon the complaint that this firm had fraudulently conspired with their co-defendants to dispose of their property to such co-defendants so as to hinder and delay their creditors, and that by such fraudulent acts the plaintiffs incurred expense, and were subjected to delay and finally lost their debt. The Supreme Court of the United States held that the action would not lie; that the debtors, as the owners of their own property, had full power of disposition thereof, and that no one could interfere with such disposition unless by express statute conferring such power

upon the creditors to pursue the debtors, and those in combination with them.

The court in its opinion said: "To enable the plaintiffs to sustain an action on the case like the present it must be shown that the defendants have done some wrong; that is, have violated some right of theirs (the plaintiffs'), and that the damage has resulted as a direct and proximate consequence from the commission of
27 that wrong. The action cannot be sustained, because there has been a conspiracy or combination to do injurious acts."

(Approving) Saville *v.* Roberts, 1 Lord R., 374.
Hutchins *v.* Hutchins, 7 N. Y., 104.

The same conclusion was reached in Lamb *v.* Stone, 11 Pick., 527, and Wellington *v.* Small, 3 Cush., 146, both of which were like cases.

In Smith *v.* Blake, 1 Day (Conn.), 250, it was held that an action for damages would not lie in favor of the creditor of a person who is insolvent against a third person charging him with having fraudulently taken and claimed the property of the insolvent as his own to defraud the creditors.

"Where a person covinously recovered a penalty given by statute to any one suing for it, and 'A' without suing for the penalty brought an action on the case against the person who had covinously recovered, held, that the action would not lie, as 'A' showed no special damage, and that the remedy in such cases was by indictment."

Burnet *v* Davidson, 10 Ired. (N. C.) L., 90.

Green *v.* Kimble, 6 Blackf., 552, was a case where, after an execution against the property of A and his surety B on a replevin bond was delivered to the sheriff, C fraudulently converted certain goods of A to his own use, the latter having no other property, and the execution was then levied on the property of B, who paid the judgment and sued C for the fraudulent conversion of A's property, the court held that the action would not lie, as B had no legal interest in the property of A when the wrongful act of C was consummated. There can be no doubt that the result would have been the same had there been fraudulent conspiracy between A and C to cheat B.

28 "As a general rule, the action for a tort must be brought in the name of the person who had a legal interest in the property at the time the tort was committed." Dawes *v.* Peck, 8 T. R., 330. In Austin *v.* Barrows, 41 Conn., 287, it was held that an action would not lie for a conspiracy in favor of a creditor of a person who is insolvent against third persons charging them with having fraudulently taken and concealed the debtor's property, so it could not be reached by attachment.

In Cowles *v.* Day, 30 Conn., 410, which was an action on a statute by a creditor against a debtor for the fraudulent removal and concealment of property, so that it could not be found to be attached, the court said: "It is, of course, an action which could not have been been sustained at common law."

In Moody *v.* Burton, 27 Maine, 427, the court held that where a fraudulent conveyance of property is made for the purpose and with the intent to defraud creditors, an action on the case to recover damages for that cause by one of those creditors against the parties to such fraudulent conveyance could not be sustained; and further, that the decision would have been the same if the declaration had contained an averment that an attachment of the property conveyed was prevented by the fraudulent representations of the defendant.

Bump, in his excellent treatise on fraudulent conveyances (2 Ed., p. 516), referring to the doctrine now under consideration, says: "Upon such proof (conspiracy to defraud a creditor at large) he would not be allowed to recover his debt, for that would still be subsisting, and might yet be collected. Nor would he be entitled to recover the value of the property conveyed, for to that he has no better claim than other creditors. The only loss or injury which
29 could be shown would be that he has been deprived of a chance or possibility of obtaining payment from that property. The loss would not even be so great as this, for he would still have a chance of reaching the property or its proceeds in the hands of the fraudulent holder. The value of his chance to secure it and have it applied to the payment of his debt is all that he has lost, and would be the only basis upon which a jury would be authorized to estimate his damages. There are no data tables or other means by which such a chance can be estimated. The loss or injury is too uncertain and remote for legal estimation. The action can only be maintained by proof of a direct, certain, and material injury."

An action for conspiracy cannot be maintained for inducing a testator not to leave the plaintiff a legacy in his will.

Hutchins *v.* Hutchins, 7 Hill, 104.

In an action for conspiracy to injure, the damage, and not the conspiracy, is the gist of the action.

Lavitz *v.* Van Ausdale, 65 Penn. St., 507.
Parker *v.* Huntingdon, 2 Gray, 124.
Jones *v.* Baker, 7 Cowen, 445.
Hutchins *v.* Hutchins, 7 Hill, 104.
Specially Adler *v.* Fenton, 24 Howard, 408.

In Cooley on Torts, p. 125, the learned author says: "As it is the wrong accomplished—in other words, the deprivation of some right—that must support the action (conspiracy), it follows that if what the plaintiff has been deprived of was not a right at all, but an advantage merely hoped for, he cannot maintain his suit."

We direct the attention of the court specially to a comparatively recent case, Bradley *v.* Fuller, 118 Mass., 239. In that case
30 the declaration in tort alleged that the plaintiff was the owner of an unpaid note given for a valuable consideration by a corporation; that the defendant, who was the treasurer of the corporation, conspired with B. to defraud the plaintiff and prevent him from securing his debt by attachment and levy; that the defendant issued a note of the corporation, fraudulently, signed by himself as

treasurer and payable to his own order; that this note was fraudulently transferred to B; that the defendant fraudulently represented to the plaintiff that the corporation was solvent, and that there was no attachment against it; that B had fraudulently commenced suit by attachment, and attached all the corporate property which he held for the defendant. The court held, on demurrer, that the declaration set forth no cause of action.

In Randal *v.* Hazleton, 12 Allen, 412, it was held that if a mortgagee of land voluntarily promises the mortgagor not to act under a power of sale contained in the mortgage without notice to him, but is afterwards induced by falsehood to assign the mortgage to persons, who thereupon proceed to sell the land under the power of sale without notice to the mortgagor and clandestinely, whereby the latter is deprived of his equity of redemption, that the mortgagee cannot maintain an action at law against the parties guilty of the fraud.

The fact that these are cases without precedent should be considered, for if the plaintiffs "may have redress by any of the forms of action now known or practiced it would be unwise and unsafe to sanction an untried one, the practical operation of which cannot be foreseen."

Lamb *v.* Stone, 11 Pick., 532.
Randall *v.* Hazleton, 12 Allen, 412.
Anthony *v.* Slaid, 11 Metcalf, 290, (Shaw, Ch. J.)

31 Tested by the doctrine established by the authorities cited, what right have the plaintiffs to maintain these actions? They have lost no lien, for they had none. They had no interest in the property, and no claim against the taxpayers. Their judgments are against the county. This court could do no more than compel the county officers to proceed as designated by the State law, and levy and collect, if they can, the taxes. This court can appoint no receiver, no tax collector, and can do nothing more than order the machinery provided by the State laws put in motion. If it be that "through wars or rumors of wars," "through plots or counterplots," or from any cause, the State officers cannot or will not collect, or the taxpayers cannot or will not pay sufficient revenues to liquidate the plaintiff's judgments, then we will admit that the plaintiffs are in the condition of untold numbers of creditors who have claims, but cannot realize on them. It may be inconvenient for them to wait or not to be paid as it has been to thousands before. They are responsible for none of the costs or expenses resulting from the contest between the county officers and the tax payers. The contest for the collection of these taxes is between the State, its officers, and citizens, and taxpayers.

We have not set out in any detail in this brief the decisions of the Supreme Court of the United States in Rees *v.* Watertown, Heines *v.* Levee Commissioners, Barkley *v.* Levee Commissioners, and "the City of Memphis" case, but have contented ourselves with simply referring to them, because we know this court to be perfectly familiar with the facts involved in them, and the principles deter-

mined by them. Those decisions conclusively settle that these taxes can only be collected in the manner and by the officers designated by the State law, and that neither this court nor these plaintiffs can collect directly or indirectly such taxes.

32 The sections of the law of Missouri cited by us show that the collector is chargeable with these taxes, collects them from the taxpayers, accounts for them to the county court, pays them to the county treasurer, who in turn pays them out on warrants. If upon the facts alleged in the petitions any one has been damaged so as to give a cause of action for conspiracy, it is the collector, not the plaintiffs. Under the law of Missouri the taxes are not a lien upon personal property until actually seized by the collector. They are, however, liens upon the real estate from the time of assessment.

Now, suppose that after the tax-book comes into the hands of the collector, some taxpayer of the county of Scotland, seeing the collector about to seize his horse, his only property for the taxes in question, should shoot the horse, willfully, wrongfully, solely to prevent the same being seized for the taxes, would that act constitute any ground for a suit for damages by the collector against the taxpayer? It certainly would leave the taxes unpaid and uncollectible, but would it give any other claim to the collector than the claim for taxes which he already had before the act? Certainly not, for there would be no damage capable of legal estimation. If the collector could not sue, much less could these plaintiffs. Or, suppose others in conspiracy with the taxpayers had killed the horse, could they be sued for the act either by the collector or the plaintiffs? To ask the question is to answer it in the negative. Neither the collector nor the plaintiffs had any legal property in the horse, and therefore suffered no legal damage.

Suppose an execution creditor and sheriff are about to seize the personal property of the debtor, when the debtor and others form themselves into a band of conspirators and incendiaries, and apply the torch to the property to prevent its falling into the hands of the creditor or officer, and thereby the property is turned to

33 worthless ashes. Yet we say there would be no action at law for damages, because neither the creditor nor the officer had any legal interest in the property, or suffered any legal damage by the act.

Again, suppose after the collector had seized the horse of the taxpayer for the taxes in question, a thief should steal it. Could the plaintiffs replevy the horse or sue the thief for damages? Certainly not, for they would have no legal interest in the property, and would suffer no legal damage by the act, and even the thief could defend against such suits. Unquestionably the thief would be civilly liable to the collector and the taxpayer, the owner of the horse, and also amenable to the criminal laws of the State, but not in any way liable to the plaintiffs, any more than to the man in the moon.

The ultimate ground of recovery in these actions, if recovery can be had, is that the taxpayers, through the conspiracy of the defend-

ants, have fraudulently refused, or have been fraudulently prevented from paying the taxes in question. We submit that even if the taxpayers were the debtors of the plaintiffs, which they are not, these actions would not lie.

No part of the judgments have been obliterated; no part of the taxes have been destroyed; the liability of the county and the liability of the taxpayers for the taxes remains intact, interest is running on the judgments, interest and penalties are accumulating on the taxes, and hence no property interests of the plaintiff have been injured, and they have suffered no legal damage. The demurrers should be sustained.

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34 In the Circuit Court of the United States for the Eastern District of Missouri. September Term, 1880.

JOHN R. FINLAY, Plaintiff,
vs.
THOMAS McALLISTER *et al.*, Defendants.

The pleadings are set out in full in the brief of the defendants. The court will there see that the demurrers in the two cases do not state the same objections.

We will, however, notice briefly the points relied upon by the defendants' counsel in their argument in support of the demurrers, and then give to the court our view of the case, and the authorities on which mainly we rely for support of our petition.

35 The defendants reply upon two points, and argue both together. We will separate them and answer them *seriatim*.

1st. "The plaintiffs have no such legal property interest in the taxes in question as to entitle them to maintain actions for conspiracy."

We are at a loss to know just what the learned counsel mean by emphasizing the word legal property interest.

If the plaintiffs have any interest in the taxes, it is a legal interest. This court has determined that these plaintiffs have a legal demand against the county of Scotland in its corporate capacity. This it did when it entered judgment upon plaintiffs' original demand.

That question is now *res adjudicata*. This court has also determined that the plaintiffs have a legal interest in the taxes assessed to pay said judgment.

It has determined that the levy and collection of said taxes is the only way whereby the plaintiff can collect his judgment. This it did when it adjudged the plaintiffs' right to a peremptory writ of mandamus requiring the proper officers to levy and cause said taxes to be collected. Had there been any property of the county subject to execution, or any other legal mode of collecting said judgment, the mandate would not have been granted.

In elaborating their propositions, the learned counsel take the position that the taxpayers are not the parties in interest in the cause that it is the county in its *quasi* corporate capacity that owes the debt, and not the people.

36 While this may be true in a technical sense, it is not true in fact; and where, as in the present case, there is no property belonging to the county in its corporate capacity that is subject to execution, then the taxpayers become, and in reality are, the debtors, and each in his individual capacity is charged with the payment of the debt to the extent of the value of his property within the county subject to taxation. They are each individually taxed for the payment of the debt in reference to their ownership in the property and its value.

The gentlemen say: "In taxing its people, there are only two parties recognized by law, namely, the State and its chosen officers on the one hand, and the taxpayers on the other."

While this may also be true in respect to the ordinary revenue required to be raised by the law of the State, it is by no means true when applied to the tax in question. There are other parties interested, and whose interest this court directly recognizes. That other party is the judgment creditor. Upon his application the court compels the officers to proceed to levy the tax and to collect the same; and this it will do in spite of the laws of the State prohibiting said officers from making such levy. This court has in numerous instances recently done so, setting aside for that purpose the law of the State known as the "Cottey bill."

Neither the proposition that the taxpayers are not indebted to the plaintiff, nor the other, that the plaintiff has no interest in the taxes, are true. That the taxpayer is so indebted is undoubtedly true.

37 The fact is the county is only the nominal defendant. The people, the corporators—the taxpayers, if you please—are the real parties in interest.

This was well stated by the late Mr. Justice Grier in McCoy *vs.* Washington County, 3 Wal., 381, where he says:

"Though the metaphysical entity called a corporation may not be physically a citizen, yet the law is well settled, that it may sue and be sued in the courts of the United States, because it is but the name under which a number of persons, corporators, and citizens may sue and be sued." "In deciding the question of jurisdiction, the court looks behind the name to find who are the parties really in interest." "In this case the parties to be affected by the judgment are the people of Washington county."

This direct interest of the people, the taxpayers in these judgments, has been fully recognized by the State courts Missouri in a number of cases, commencing, perhaps, with Hooper *vs.* Ely, 46 Mo., 505, by affirming their right to injunctive relief without the intervention of the law officers of the State where illegal taxes are sought to be imposed upon them, or debts created unlawfully that may require taxation for their payment.

Upon the other hand, it is just as apparent that the judgment creditor has a direct interest in the taxes levied to pay his debt. It is

his only remedy. The learned gentleman, about page 26 of brief: "That the plaintiff is entitled to his mandamus simply because there is no other adequate remedy."

Because of this interest, and the fact that he has no other
38 adequate remedy, the court lends it extraordinary aid. Then the creditor has not only an interest in the tax, but he has a right to the remedy. It is, in the sense of such right, his property, and if officers commanded to execute it fail or refuse to do so, the creditor may sue and recover his damages caused by such failure and refusal.

Amy *vs.* Supervisors, 11 Wal., 136.

This he could not do unless he had an interest in the subject-matter and right to the remedy.

Now, if he has this interest, and may sue and recover of the recalcitrant officer, what logic is there in the position that he cannot sue the wrong-doer who opposes and prevents the officer from applying the remedy? They have by their wrong deprived the plaintiff, and are still depriving him, of his remedy, and "he takes my house who takes the prop that doth sustain my house" may well be said in reply to the anomalous position of the defendants.

The fact that the judgment is not "*in hac verba*" against the tax-payers and these defendants does not absolve them from the liability of responding in damages for their wrong. The maxim "*Dolus circuitur non Purgatur*" certainly finds application in answer to the defendants' position.

It is a well settled rule that in actions for damages, sounding in torts, and especially where there is fraud and collusion alleged and proved, there need be no privity between the wrong-doer and the person damaged.

The Supreme Court of the United States, in a recent case (National Saving Bank *vs.* Ward), has fully recognized and stated this doctrine.

39 "No wrong-doer can be allowed to qualify and apportion his own wrong."

Davis *vs.* Garritt, 6 Bing., 716.

"Where one does an illegal or mischievous act in such a careless or improper manner as that injury to third persons may probably ensue, he is answerable in some form of action for all the consequences which may directly and naturally result from his conduct."

Vanderburg *vs.* Truaux, 4 Dem., 464.

Guille *vs.* Swan, 19 Johns., 381.

Where the jury found that in consequence of the wrongful abduction of the plaintiff's slaves, the cattle of the neighborhood destroyed his corn, and a flood in the river swept away a quantity of his wood, it was held that those who carried away his slaves were liable for the damages done by the cattle and the flood.

McAfee *vs.* Clifford, 13 How., 447.

Where persons fired on negroes and prevented them from trading

with parties on the coast of Africa, held that an action lay for the loss of trade.

Tarleton *vs.* McGawley, Peake's N. P. Cases, 205.

"Every person who does a wrong is at least responsible for all the mischievous consequences that may reasonably be expected to result under ordinary circumstances from such misconduct."

Rigby *vs.* Hewitt, 5 Exch., 240.

Where one commits a trespass it is immaterial whether he contemplates the damages which result or not. He must be held
40 to contemplate all the damages which legitimately follow from his illegal act.

Allison *vs.* Chandler, 11 Mich, 542.

Where a plaintiff and his attorney, being aware of the facts concerning the levy on property not belonging to the defendant, approved it, and on request refused to consent to its release, they were held jointly liable with the officer, (Cook *vs.* Hopper, 23 Mich., 511; Cooley on Torts, 129), and if jointly liable were of course severally liable, such always being the rule in torts.

These gentlemen say that no action lies for a conspiracy, but only for the damages resulting. This, as a legal proposition, is undoubtedly correct. But many things done by an individual singly may not be unlawful or capable of resulting in damages which, when done by an organized body in pursuance of a matured plan, becomes injurious and mischievous, and if damage ensue the conspirators are liable.

Lamb *vs.* Stone, 11 Pick., 532.

Cooley on Torts, 279, *et seq.*

This combination, formed to accomplish a certain object, is a conspiracy, and while there can be no action for the conspiring apart from the damages sustained, yet, if in the accomplishment of their purpose, any person is damaged, the conspirators, or any number of them, will be held responsible for such damages to whomsoever done. And there is no difference in this regard whether the person injured is the one the conspirators are proceeding against or not. It is enough that in attempting to or in doing an unlawful or unwarranted act, or a lawful act in an unlawful or careless manner, damage ensues.

41 The "wrong-doers cannot apportion their wrongs;" they are each jointly and severally liable for all damages to any and all persons resulting from their wrongful acts. This is a proposition of elemental law, and we presume will not be controverted.

A combination among journeymen workmen of any trade or handicraft to coerce other journeymen and master workmen employed in the same trade or business, to conform to rules established by such combination for the purpose of regulating the price of labor and carrying such rules into effect by overt acts, is a conspiracy.

People *vs.* Fisher, 14 Wend., 9.

State *vs.* Donaldson, 32 N. J. Law, 157.

Masterick *vs.* Ramage, Neb. 6 Cent. L. J., 485.

Carew *us.* Rutherford, 106 Mass., 1.

The next proposition is that "the plaintiffs have sustained no legal damages by the alleged acts of the defendants."

Let us see how this is in fact: The plaintiffs recovered judgments, and therefore had a legal claim against the county for the amount of their said judgments. Finding no property belonging to the county out of which they could make their judgments, and the officers of the county refusing to provide for its payment, they are forced to ask for an alternative writ of mandamus to compel the levy of a special tax. The county officers still refusing to levy such tax, the plaintiffs obtain a peremptory writ.

The county court then move in the matter and levy the
42 tax, and cause the warrant for its collection to be placed in the hands of the proper officer for collection, Then this conspiracy is formed to prevent and defeat such collection.

The tax becomes delinquent, and the collector proceeds to levy upon the property of sundry delinquent taxpayers, and advertises the same for sale to raise the money whereby to pay these judgments.

It is the only remedy left to the plaintiffs. "This court cannot send its marshal there to protect the collector, or to collect the tax himself," and there is no property to respond for the debt other than the property of these delinquent taxpayers.

The time for sale comes, and in pursuance of this conspiracy to prevent these plaintiffs from collecting their judgments, these defendants and their confederates, by force and arms, by threats and intimidations, prevent the collector from selling the property, or what is the same, prevent the bystanders from bidding on it when offered for sale.

Now, who is interested in the collection of this judgment? These plaintiffs and them only. Who is compelled to lay out of their money by reason of these acts? These plaintiffs and them only. Who is put to additional expense and trouble to collect their debt? These plaintiffs.

In all this there must be some damage to the plaintiffs. It is only a repetition of the mythology of Tantalus to say to these plaintiffs, you are not damaged—the county is still holden for your debt—the property is still there and may be levied upon.

We aver that the duress and intimidation still exists, and
43 unless this court interferes to punish the wrong-doers and redress the wrongs of the plaintiffs, it will still continue to exist.

The gentlemen say (page 25 of brief): "Those owning the property in the county where the debts were contracted may be entirely different persons from those owning it when judgments were rendered, and they in turn a different race or generation from those owning it when the judgment is paid."

This will certainly be true if this court adopts the views of the gentlemen, namely: That there is no adequate remedy for the collection of the debt save a mandamus to levy a tax, no power to enforce its collection. The property is there in sight; the court says it is liable for the debt, and commands that it be sold. These de-

fendants say it shall not be sold, and by force prevent it; and the counsel would have this court say, you are very naughty, gentlemen, but inasmuch as the plaintiffs have sustained no damages in this, that they still have their judgment and you still have your property. Why, gentlemen, you must go hence without day. "The question of whether you will pay these taxes is between you and the collector"—this court is only a scare-crow; it will pronounce high-sounding judgments; but, then, don't bother yourselves, gentlemen, you need not obey them. Nay, you may even by force, and fraud, and intimidation defy them. "This court can appoint no receiver, no tax collector, and can do nothing more than order the machinery provided by the State laws put in motion. If it be that 'through wars or rumors of wars,' 'through plots or counter-plots,' or
44 from any cause the State officers cannot or will not collect, or the taxpayers cannot or will not pay sufficient revenue to liquidate the plaintiffs' judgments, then we will admit that the plaintiffs are in the condition of untold numbers of creditors who have claims but cannot realize on them. It may be inconvenient for them to wait or not to be paid, as it has been to thousands before them." See page 33, defendants' brief.

If this is true—if so be that the property is before us out of which the law says we must collect our debt, and "the law allows it and the court awards it," but has no power to make the wrong-doer respond in damages for his unlawful acts who prevents by force the processes of the court from being carried into effect, then the sooner these plaintiffs know it the better. But we have no fears that the court will so hold.

"Process subsequent to judgment is as essential to jurisdiction as process antecedent to judgment, else the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution."

Riggs *vs.* Johnson Co., 6 Wal., at. 187,

But of what value will the process subsequent to judgment be if wrong-doers, without fear of liability for their wrong, can be permitted at will to obstruct such processes. Such doctrine is simply preposterous, and needs only be stated to be refuted.

If, as we have shown, the officer who refuses to execute the process of the court is liable in damages, then were peat the questions, why is not the wrong-doer who, by force and fraud, prevents
45 the process from being made available, likewise liable in damages to the party injured?

It is not now a question of the measure of damages; that is for the jury under the instructions of the court. The only question is, can persons who unlawfully, by force, fraud, and intimidations, obstruct the process of the court, be made liable for damages?

Underlying the whole case is a question of right, and that question of right is, whether these plaintiffs are entitled to that protection from the court, which will insure the speedy and peaceful collection of their judgments. For the speedy collection is of times an important question as affecting the measure of damages.

The second count of the petition in the case of Wm. Spackman, ad'm, *vs.* Wagner *et al.*, alleges special damages by way of loss or depreciation in the market value of the bonds in consequence of the unlawful acts of the defendants.

Now, if their acts were wrongful and wilfully wrong, they became liable for even remote damages. And in any event being wrong-doers, they must be held to respond for all damages which legitimately follow from the alleged act.

Rigby *vs.* Hewett, 5 Exch., 240.

Allison *vs.* Chandler, 11 Mich., 542.

In actions for torts, and especially those torts that are of an unlawful, aggressive, oppressive, and malicious or fraudulent character, there is a much greater latitude of inquiry as to the questions of real damages allowed than there is in those cases, sounding in contract or merely nominal torts.

46 This question is very ably considered and fully stated with the authorities in its support, in the case of Allison *vs.* Chandler, 11 Mich., 542, and we forbear further comment upon that question, but invite the attention of the court to the case referred to, and the authorities there cited; for in the language of the learned justice delivering the opinion to fully compare and analyze the authorities would require a treatise.

After having stated the reasons for the stricter rules applicable to the measure of damages sounding in contract, the learned judge proceeds to say:

"None of these several considerations have any bearing in an action purely of tort. The injured party has consented to enter into no relation with the wrong-doer, by which any hazard of loss should be incurred; nor has he received any consideration, or chance of benefit, or advantage for the assumption of such hazard; nor has the wrong-doer given any consideration, nor assumed any risk, in consequence of any act or consent of his. * * * No act of his has contributed to the injury; he has yielded nothing by consent; and least of all he has consented that the wrong-doer might take or injure his property or deprive him of his rights for such a sum, as by the strict rules which the law establishes for the measure of damages in actions upon contract he may be able to show with certainty he has sustained by such injury. Especially would it be unjust to presume such consent, and to hold him to the recovery of such damages only as may be measured with certainty by fixed and definite rules, when the case is one which from its

47 very nature affords no element of certainty by which the loss he has actually suffered can be shown with accuracy by any evidence of which the case is susceptible. Is he to blame because the case happens to be one of this character? He has had no choice, no selection. The nature of the case is such as the wrong-doer has chosen to make it; and upon every principle of justice he is the party who should be made to sustain all the risk or loss which may arise from the uncertainty pertaining to the nature of the case and the difficulty of accurately estimating the result of his own

wrongful act. Upon what principle of right can courts of justice assume—not simply to divide this risk, which would thus far be unjust—but to relieve the wrong-doer from it entirely, and throw the whole upon the innocent and injured party? Must not such a course of decision tend to encourage trespass, and operate as an inducement for parties to right themselves by violence in cases like the present?"

We have quoted thus largely from the opinion of the court, because in our minds the language throughout is much more peculiarly applicable to the case now before the court than it was to the case wherein it was written. See also Vanderburg *vs.* Truax, Den. 464; Guille *vs.* Swan, 19 Johns. 381.

Field on damages and cases cited §599.

McAfee *vs.* Clifford, 13 How. 447.

Tarleton *vs.* McGawley, Pearce's N. P. cases 205.

In all the cases cited the damages were more remote than as claimed in said second count. These bonds are marketable
48 securities, and the market is very sensitive and liable to depreciation for even slight causes. The news that the payments of judgments for past due interest on the bonds was being resisted by organized force and by widespread conspiracy among the citizens of the county, could have no other effect than to depreciate their marketable value.

The plaintiffs are entitled to the highest price that their bonds may bring at any time, founded upon their commercial value, apart from any combinations to depreciate their value. If their value is depreciated by wrongful, fraudulent, wilful, and malicious acts of any person, then the wrong-doer is liable for such loss in value.

There is no question but that commercial securities may be slandered, and the wrong-doer who slanders them be held liable for all damages caused by way of the depreciation in value in consequence of such slander.

Referring to the cases of Rees *vs.* Waterton, Heimes *vs.* Levee, Connor & Barkly *vs.* same, the counsel for defendants say: "These decisions conclusively settle that these taxes can only be collected in the manner and by the officers designated by the State law, and that neither this court nor these plaintiffs can collect, directly or indirectly, such taxes."

While not for a moment admitting this broad assertion, nor yet contradicting it, we say that it has no application to the question raised in the demurrers. This is not a question whether the United States courts have any power outside of the State machinery to collect taxes levied under its mandates to satisfy its judgments,
49 but whether or not this court can or will protect such officers in the discharge of their duties when acting under the mandates of the court; whether, "by plots or counter-plots," wrong-doers will be allowed, unmolested, to deprive the suiters in this honorable court of their rights under its judgments and orders. In short, whether or not it be lawful for armed and organized bodies of men,

by force, fraud, and intimidation, to prevent these plaintiffs from ever realizing their judgment.

None of the cases referred to by the counsel for defendants in their brief are at all parallel with the case at bar, nor do they involve the same principle. The case of Bradley *vs.* Fuller, 118 Mass., 239, to which the especial attention of the court is called, is entirely dissimilar, and the court in its opinion summarizes these points of difference in the reasons given why no action would be in that case.

Speaking of the first and third counts, the court say: "Taking these counts in the most favorable sense for the plaintiff, they simply charged that the plaintiff, induced by the falsehood alleged, refrained from carrying into effect an intention to attach, and that another creditor did attach and apply the company property in payment of his debts. It necessarily must be uncertain whether the plaintiff would have attached the property and applied it to the payment of his debt if the alleged representations had not been made."

And referring to the second count of the petition, the court say: "This count contains fewer allegations than the others, and the objections stated to them are equally fatal to this."

50 How different are these facts from the case before the court. Here there was not merely an unmatured intention to move in the direction of collecting the debt of the plaintiff, but the plaintiff had moved—had taken every step that was necessary to enable him to collect the debt; had incurred all the trouble and costs of a protracted litigation, and had obtained the judgment of the court authoritatively settling the legality of his demand; had obtained the writs of the court necessary to enable him in due process of law to collect his debt, and the officers charged with the collection of his debt were proceeding under the orders and mandate of this court to collect said debt, and had levied upon and taken possession of the property of persons who by law were liable in part for the payment of said debt, and was offering it for sale, when these defendants, by unlawful interference, prevented persons from bidding on said property; and by a continuation of the same methods still are preventing the officers from collecting said debt.

It is hardly possible to conceive of two cases more widely different in the elemental facts and acts for which damages are asked. Nor are the other cases cited by defendants' counsel any more nearly allied in principle to the cases before the court.

In the case of Randall *vs.* Hazleton, 12 Allen, at 461, the court thus sums up the facts of the case, which show that it is entirely dissimilar to the case at bar. They say "the declarations shows no consideration for the alleged promise. * * * It was an agreement not legally binding," &c. The case was sounding in contract, and not properly in tort at all.

51 The facts in Lamb *vs.* Stone, 11 Pick., 532, are thus summed up by the court: "The plaintiff had a just debt due from one Thompson. The latter had property liable to attachment sufficient to pay the debt; the defendant took a fraudulent conveyance of this propety; Thompson has absconded from the State;

the plaintiff has not been able to arrest him or attach his property, or otherwise obtain his debt," and avers intent in defendant to defraud. The court then proceeds to say:

"It ought to be further remembered that this is not an action of conspiracy or of a case in the nature of a conspiracy. It is not founded on any alleged combination or confederacy. The declaration does not set forth any conspiracy to defraud the plaintiff or to evade or defeat any legal process. No such fact can be presumed to exist."

And the case throughout bristles with points of difference between that case and the one now before this court, which points of difference the court cannot fail to observe and apply in its deliberations.

When construed in the light of the references therein made to Adams *vs.* Paige, 7 Pick., 542; Yates *vs.* Joyce, 11 Johns., 136; Smith *vs.* Tonstul, Carthew, 3, the case becomes an authority for the maintenance of the plaintiffs' actions, and for that reason we invite the special attention of the court to it.

"If we were looking for differences between Lamb *vs.* Stone" and the case at bar "it would be sufficint to state that the" case at bar "is an action for conspiracy between" the defendants and others
"to defraud the plaintiffs by means" of threats of violence
52 and intimidation, "in which the unlawful confederacy is the gist of the action."

The cases of Adams *vs.* Paige and Yates *vs.* Joyce settle the objection that the suit at bar is without precedent, for in principle they are not distinguishable. The only possible difference in the two cases that can be urged is in relation to the measure of damages.

The counsel lays much stress upon the fact that the case at bar is without precedent, that the redress sought is a new and untried form of action. We say this is not true in fact. The remedy sought is an old one. In the doing of an unlawful act damage ensues. The wrong-doer is always liable in such case to the party injured irrespective of the question or privity. The wrong done and the injury received is the gist of the action and not the privities. But were it true that it is a new form of action, then we say, it is the pride and the boast of the common law, that an action lies whenever a damage is occasioned by a wrong done.

Adams *vs.* Paige, 7 Pick, at 550.

Whenever a new injury is done, a new method of remedy must be pursued.

3 Blackstone's Comm., 123.
Webber's case, Burr, 2345.
Lamb *vs.* Stone, 11 Pick, 532.
Yates *vs.* Joyce, 11 Johns., 136.

It is of no avail for the defendants to say, "no part of the judgments have been obliterated, no part of the taxes have been
53 destroyed; the liability of the county and liability of the taxpayers for the taxes remain intact; interest is running on the

judgments, &c." Of what avail is it to the plaintiffs when it is admitted, as the demurrer does admit, that by reason of the defendants and their co-conspirators, no part of these taxes can be made available to pay these unobliterated judgments and accruing interest. The delay occasioned by defendants' acts has caused, and is still causing, the plaintiff to be to trouble and expense in efforts to collect the same.

We further claim that inasmuch as the defendants by their own wrong have prevented, and still do prevent, the collection of plaintiff's judgment, they will not be allowed to acknowledge their wrong and evade the payment of the debt, which but for their wrong would now have all been paid, and remit the plaintiff to the ordinary mode of collecting it. They must be responsible for the full extent of the consequences of their wrong-doing. The demurrers should be overruled.

A. J. BAKER,
F. T. HUGHES,
Attorneys for Plaintiffs.

54 And afterwards, to wit, on the 30th day of March, A. D. 1881, at a regular stated term of the circuit court of the United States, in and for the eastern district of Missouri, begun and held at the city of St. Louis, in said district on Monday, the 21st day of March, in said last-named year, the following further proceedings were had and appear of record in said cause, to wit:

JOHN K. FINDLAY, Plaintiff,

vs.

THOMAS MCALISTER *et al.*, Defendants.

55 This cause having heretofore been submitted to the Honorable Samuel F. Miller, circuit justice, by agreement of parties upon briefs of counsel, and the same coming on to be heard upon the demurrer to amended petition, the court finds the law upon said demurrer for the defendants, and orders that the same be sustained, and that judgment be entered herein for defendants upon said demurrer.

It is therefore considered by the court that the plaintiff take nothing by his writ herein; that the defendants, Thomas McAlister, John Q. Adams, Francis M. Cowell, James Donnelly, J. Y. McClintock, Josiah Smoot, W. P. Browning, J. D. Skidmore, Joseph E.
56 Billups, Cy. W. Jamison, Albert H. Pitkin, Benjamin T. Shacklett, James S. Busey, D. F. Kendal, and Levi J. Wagner, go hence without day, and have and recover of said plaintiff, John K. Findlay, their costs herein expended, and that a fee bill issue therefor.

And afterwards, to wit, on the 21st day of May, A. D. 1881, at said term of court, the following further proceedings were had in said case and appear of record, to wit:

57 JOHN K. FINDLAY, Plaintiff,

vs.

THOMAS MCALISTER *et al.*, Defendants.

Now comes plaintiff, by his attorney, and presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation, citing and admonishing the said defendants to be and appear at a Supreme Court of the United States, on the second Monday of October next; which writ of error is allowed and said citation signed by the judge.

58 And thereupon said plaintiff presents to the court a bond in the penal sum of five hundred dollars, which bond is approved and ordered to be filed.

Said bond is in words and figures following, to wit:

59 Know all men by these presents, that we, John K. Findlay and A. J. Baker, are held and firmly bound unto Thos. McAlister, John Q. Adams, Francis M. Cowell, James Donnelly, J. G. McClintock, Josiah Smoot, Wm. P. Browning, J. D. Skidmore, Joseph E. Billups, Cy. W. Jamison, Albert H. Pitkin, Benjamin Shatleck, James S. Bussy, D. H. Kendall, and Levi J. Wagner in the full and just sum of five hundred dollars, to be paid to the said Thos. McAlister, John Q. Adams, Francis M. Cowell, James Donnelly, J. G. McClintock, Josiah Smoot, Wm. D. Browning, J. D. Skidmore, Jos. E. Billups, Cy. W. Jamison, Albert H. Pitkin, Benj. Shattuck, James S. Bussey, D. H. Kendal, and Levi J. Wagner, heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at the March term, 1881, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between John K. Findlay, plaintiff, and the above-named obligees as defendants, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants named as obligees aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said John K. Findlay shall prosecute said error to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else, to remain in full force and virtue.

Sealed and delivered in presence of—

JOHN K. FINDLAY, [SEAL.]
By A. J. BAKER, *His Att'y.* [SEAL.]
A. J. BAKER. [SEAL.]

Approved by—
SAMUEL TREAT, *Judge.*

60 [Endorsed:] No. 1464. United States circuit court, eastern district of Missouri. John K. Findlay *vs.* Thos. McAlister *et al.* Bond. Filed 21st day of May, 1881. M. M. Price, clerk.

61 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 1464, of John K. Findlay, plaintiff, against Thomas McAlister *et al.*, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 27th day of June, in the year of our Lord eighteen hundred and eighty-one.

[SEAL.] M. M. PRICE, *Clerk of said Court,*
By A. P. SELBY, *Deputy.*

Endorsed on cover: E. Missouri C. C. U. S. No. 117. John K. Findlay, plaintiff in error, *vs.* Thomas McAllister, John Q. Adams, Francis M. Cowell *et al.* Filed 15 October, 1881.